



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Robert F. Peden, Jr.
County Attorney
Matagorda County
Bay City, Texas

Dear Sir:

Opinion No. 0-4022

Re: Do the provisions of Art. 908, P. C., requiring the payment of a \$5.00 license fee and the keeping of a record of game killed apply to the described fact situation?

Your request for our opinion on the hereinabove captioned question has been received by this department. We quote from your letter as follows:

"A question has been raised as to the applicability of Art. 908, Penal Code of the State of Texas, regarding the hunting on game preserves for pay, to the following fact situation:

"A purchases the shooting rights and privileges on 1200 acres of land from B paying as consideration therefor the sum of \$100.00 annually, the contract or purchase being an option contract for five or more years. A, as such purchaser, makes no charge to any person to hunt upon the land upon which he has purchased the shooting rights, but A does, by invitation, take friends hunting free of charge. A has complete control and charge of the premises as to shooting and hunting privileges. A does not operate the premises as a hunting club, but operates the same just as though he owned the

land in fee, hunting on it himself, and permitting his friends to hunt without charge.

"Do the provisions of Art. 908, Penal Code, requiring the permit of a \$5.00 license fee and the keeping of a record of game killed, apply to the above fact situation?"

Article 908 of Vernon's Annotated Penal Code provides as follows:

"Art. 908. Hunting on game preserves for pay

"It is hereby declared unlawful for any person or persons, who may be acting as manager of any club, or the owner of any club, or shooting resort or shooting preserve, or lessor of premises leased for hunting purposes, to receive or accommodate as a guest or member of said club, or shooting resort, or shooting preserve, or lessee of premises leased for hunting purposes, for pay, any person or persons engaged in hunting, before such manager of such club, shooting resort, shooting preserve, or premises leased for hunting purposes, shall have applied for and received a license from the Game, Fish and Oyster Commissioner, or one of his deputies, granting him the right for the year beginning September 1 and ending August 31, following, to receive and accommodate any such person or persons at such club, shooting resort, shooting preserve, or premises leased for hunting purposes.

"Before such license is issued the person applying for same shall pay to the Game, Fish and Oyster Commissioner the sum of five (\$5.00) dollars, and shall file with the Game, Fish and Oyster Commissioner the name of said club, shooting resort, shooting preserve or premises leased for hunting purposes, and shall file with the Game, Fish and Oyster Commissioner an affidavit that he will not violate any of the provisions of this article and will endeavor to prevent guests of said club, shooting resort, shooting preserve,

or premises leased for hunting purposes from doing so, and that no guest will be accommodated who has not previously secured a hunting license.

"All such managers of clubs, shooting resorts, shooting preserves and premises leased for hunting purposes shall be required to keep a suitable record book, and each guest or member shall be required to register, showing his name and place of residence, license number, and a record of each day's kill of different birds and game, and a complete record must be made to the Game, Fish and Oyster Commissioner by such manager of club, shooting resort, shooting preserve or premises leased for hunting purposes, not later than February 10 of each year.

"Whenever any manager of any club, shooting resort, shooting preserve or premises leased for hunting purposes, fails or refuses to comply with any of the provisions of this article, the Game, Fish and Oyster Commissioner is authorized and empowered to cancel his license without refund or return of the license fee, and no license shall be renewed or issued to such party, or parties, thereafter for a period of one year.

"Any manager of any club, shooting resort, shooting preserve, or premises leased for hunting purposes, who accommodates hunters for reward, without first having secured the necessary license as provided in this article, or failing to comply with all the provisions thereof, shall be deemed guilty of a misdemeanor and upon conviction shall be fined the sum of not less than one hundred (\$100.00) dollars, nor more than two hundred (\$200.00) dollars, or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment. Such fines shall be placed to the credit of the special game fund.

"For the purpose of carrying out the provisions of this article, it shall be the duty of the Game, Fish and Oyster Commissioner to have

prepared and to furnish to all deputy game commissioners blank license with stubs attached, numbered serially, such license to be called 'Shooting Preserve License'; such shooting preserve license shall have printed across the face the year for which it is issued, shall bear the name and address of the licensee, name of club, character of game found on such preserve or lease, and the expiration date of such license. Said license must bear the seal of the Game, Fish and Oyster Commission, and must be signed by the Commissioner or one of his deputies. On the reverse side of said license shall be printed the open seasons and bag-limit, as provided in this chapter."

Said article, being a penal statute, should not be extended by construction beyond the plain import of its terms. See 39 Texas Jurisprudence Page 275, Section 146.

Article 7 of Vernon's Annotated Penal Code provides as follows:

"Art. 7. 9 General rule of construction

"This Code and every other law upon the subject of crime which may be enacted shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects; and no person shall be punished for an offense which is not made penal by the plain import of the words of a law."

We agree, therefore, with your conclusion that Article 908 is apparently intended to apply only to those managers of clubs, etc., who receive or accommodate hunting guests for pay or reward.

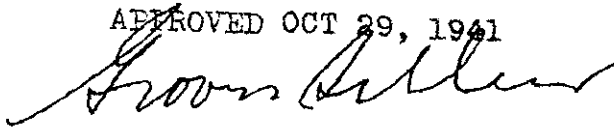
You are therefore advised that it is the opinion of this department, under the facts stated, that your question should be answered in the negative, and it is so answered.

We wish to take this occasion to thank you for your

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brief submitted with your request.

APPROVED OCT 29, 1941

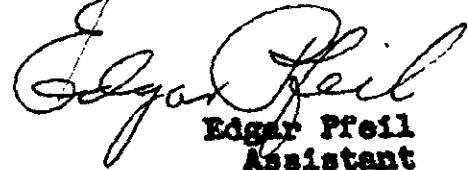


FIRST ASSISTANT
ATTORNEY GENERAL

Very truly yours

ATTORNEY GENERAL OF TEXAS

By



Edgar Prell
Assistant

EP:RS

OK
FW

